

United States Department of State



The The Foreign Service Family & Divorce Divorce

INSIDE FRONT COVER

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The Foreign Service Family and Divorce



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Chapter 1

Introduction

Divorce in the Foreign Service context is often more stressful and complicated than if both parties were private citizens in a U.S. community. When one party or both parties are assigned overseas, lack of information can complicate the issues in a divorce suit: domicile, child custody, visitation, support, and pension benefits. This guidebook provides basic information about separation and divorce for Foreign Service couples. It can also serve as a general guideline for Community Liaison Office Coordinators, Administrative Officers, and Deputy Chiefs of Mission (as the officially designated post Family Advocacy Officer) one or all of whom may be asked to assist individuals with divorce or separation issues.

It is important to note that the Department of State views divorce as a personal matter and does not provide legal services to employees or spouses. The Family Liaison Office's Support Services Officer acts as an information and referral source for separation and divorce questions. The services of the Officer are available to employees and spouses.

This guidebook is not a legal guide. Divorce and separation are legal matters that require the advice and services of an attorney. The topics in this guidebook have been selected because of their unique relationship to Foreign Service life.

Divorce and separation are governed by state laws that can differ widely in their provisions and applicability. A Foreign Service family's status and location abroad may further complicate the situation. Therefore, this guidebook cannot be relied upon as definitive with respect to any particular situation. Also, with constantly evolving and changing federal and state laws, this guidebook may become outdated in one or more respects at any time. Finally, the material in this guidebook is not to be construed as regulatory or policy setting. Applicable laws, regulations, policies and procedures take precedence.

Faye Barnes
Director
Family Liaison Office

Chapter 2

Jurisdiction in Divorce

State Residency

To get a divorce in the United States, one of the parties must be a resident of one of the U.S. states or possessions. But, if you are assigned overseas, you don't reside in any state, right? Wrong. No matter where you are, you will be considered to have a residence in the United States bearing in mind that the term "residence" has two meanings.

The term "residence" can refer to either the place where you are both physically present and currently living, which we will call **place of abode** or to the place you are considered to reside for tax purposes, also called your **domicile**. Some states refer to "domiciled residents" and "domiciled non-residents." Thus, a Foreign Service family posted to Kenya has two residences. One is their place of abode – Kenya. The other is their domicile, which may be their home leave state or the state to which they pay income taxes.

Jurisdiction to grant a divorce is usually based on domicile. Most states require that only one of the parties be domiciled in the state in order to file for divorce. Some states, for example Virginia, require physical presence for a certain period in addition to domicile.

Important Note: Anyone contemplating divorce should consult an attorney practicing in their domicile to determine that state's requirements regarding length of time involved and physical presence before initiating a divorce action.

Foreign Divorces

It is important to remember that divorce (marriage dissolution) is separate from division of property, custody, etc.

In many foreign countries, divorce can be obtained with relative ease and short residency periods. However, some U.S. courts may not recognize a foreign divorce decree, and it may be difficult to have the terms

enforced in the United States even though it is a valid termination of a marriage contract. Most courts in the United States decline to recognize a divorce in which neither party was “domiciled” in the jurisdiction in which it was obtained. Thus, a Foreign Service officer who obtains a divorce in a foreign country may have difficulty having such an action recognized by a court in the United States. In addition, there may be concern over whether each party had adequate notice of the pending action and an opportunity to participate fully in matters such as the resolution, child support, alimony, and custody issues, as well as property settlements.

Also, remember that a foreign court may hold certain biases based on the culture and society of that country. For instance, custody, support agreements, retirement annuity eligibility, or health benefits may not be treated as they would in a U.S. court. Before pursuing a foreign divorce, consult an attorney in the U.S. state of domicile to ensure that the foreign divorce decree will be enforceable in the U.S. state of domicile. If it is not, the other spouse may be able to file for divorce in that state and receive a conflicting judgment.

Diplomatic Immunity

A Foreign Service employee or spouse posted abroad with diplomatic immunity may not obtain a divorce in the country of assignment unless the U.S. Government formally waives that immunity. The individual does not control his or her own immunity, as it exists for the benefit of the U.S. Government and can only be waived with Department of State consent. Guidelines for the waivers of immunity in divorce cases are set forth in the Foreign Affairs Manual 2 FAM 221.5. All requests for waivers of immunity or any questions concerning such waivers should be addressed to:

**Office of the Assistant Legal Advisor for
Diplomatic Law and Litigation (L/DL)
Room 5420
Department of State
Washington, DC 20520
Telephone: 202-647-1074**

The Foreign Affairs Manual (2 FAM 221.5) sets forth guidelines covering some (including divorce, separation, maintenance, child custody, and child support), but not all, types of domestic relations cases:

1. If both parties consent and the action is pursued in the United States, the Department will normally grant any necessary waiver of immunity.
2. If one party is in the United States and the other party is at post, a waiver will be granted for the purpose of allowing service of process on the latter, if that party consents.
3. If one party is in the United States and the other party is at post, a waiver of immunity will be authorized to allow services on the party at post, absent that party's consent, only if the waiver is necessary in order to prevent undue hardship on the party or family members seeking service, and if the action is to be pursued in the United States.
4. Waiver of immunity will normally be granted to allow a domestic relations action to be pursued in the host country if both parties consent and if the prosecution of the action will not adversely affect the interests of the U.S. Government.

Service of Papers Abroad

Divorce is not an “in personam” action (i.e., it does not require the defendant to do something). Therefore, the court does not need to have personal jurisdiction of the defendant in order to grant a divorce, settle property, or determine custody of children.

However, alimony and child support are “in personam” actions, and the court must have personal jurisdiction. This means that the defendant must be served personally within the state, be subject to that court's long-arm jurisdiction, or submit voluntarily to the jurisdiction of the court in order for the court to order child support or alimony.

The party bringing the divorce action (plaintiff) serves papers on the other party (defendant). State laws govern service of papers. It is easier to serve papers on a spouse physically present in the state of



domicile. It is much more difficult to serve papers on a spouse who is overseas. State laws differ on these procedures, so seek legal advice.

The practical effect is that although the various methods of service discussed below are often enough for a divorce, property settlement, and custody, they may not be enough for child support and alimony, unless the defendant agrees voluntarily to submit to the court's jurisdiction.

Foreign Service employees may not use an overseas assignment to avoid service of process (22CFR 172.2(d)). Refusal of an overseas employee to accept service reflects adversely upon the U.S. Government and may result in that employee's reassignment to the United States so that the service can be made and divorce proceedings can begin.

Important Note: Department of State regulations (22 CFR 92.85) prohibit Foreign Service officers from serving process in their official capacity on behalf of private litigants or appointing others to do so. However, depending on the state, several ways exist to serve legal papers on a U.S. citizen abroad.

1. Some states permit service of papers by registered mail. If the post has an APO/FPO facility, a registered letter may be sent. If not, the papers may be sent via international registered mail.
2. Many countries are parties to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters. (20 U.S.T. 1361; 658 U.N.T.S. 163, T.I.A.S. No. 6638; 28 U.S.C.A. (Appendix following Rule 4 FRCVP); 16 I.L.M. 1339 (1977); VII Martindale-Hubbell Law Directory, Selected International Conventions.) In such countries, papers can be served by the central authority (usually the Ministry of Justice). The Bureau of Consular Affairs, Office of American Citizens Services, can provide a list of countries that have signed the Hague Convention as well as information on how to transmit a request to a foreign central authority for service under the Convention.

Another multilateral treaty on service of documents in force in many countries is the Inter-American Convention on Letters Rogatory and Additional Protocol. The United States only has a treaty relationship with countries which are parties to both the Convention and the Protocol. [S. Treaty Doc. 98-27, 98th Cong. 2d sess. (1984), ppIII-V; 14 Int'l Leg. Mat 339 (March 1975); 18 Int'l leg. Mat. 1238 (1984); Martindale-Hubbell Law Directory, Law Digest Volume, Selected International Conventions]. For up-to-date information on the operation of the Conventions, see the Bureau of Consular Affairs home page at <http://travel.state.gov> under the heading, Judicial Assistance. This includes links to the home page for the Hague Conference on Private International Law and the Organization of American States databases on the treaties.

3. In countries not covered by the Hague Convention, it is possible to hire a local attorney (or an attorney's agent) to serve the documents. [See Chapter 4: Choosing a Lawyer. See also the Bureau of Consular Affairs' information brochure "Retaining a Foreign Attorney" at <http://travel.state.gov/retainforeignattorney.html>] The foreign attorney can make an affidavit of his or her service before a local notary or at the American Embassy or Consulate. **Note**, however, that some countries regard such service to be illegal.

4. **Letters rogatory** can also serve as formal requests for service of process in countries that prohibit service of foreign court papers. However, this is a time-consuming process that almost always takes too long to be practical. Service by letter rogatory is not possible if the person to be served has diplomatic immunity.

A letter rogatory is a letter of request from a U.S. court to a court in a foreign country requesting international judicial assistance. Letters rogatory must be issued under the seal of the country and the signature of the judge. The Bureau of Consular Affairs has information on the preparation of letters rogatory on their web site: (<http://travel.state.gov/lettersrogatory.html>). For a sample letter rogatory see Moore's Federal Practice 28.05; 22 CFR 92.54, and 8 Wigmore, Evidence, rev. (McNaughton 1961) Sec. 2195a (ii). The request and all accompanying documents must be translated into the official language of the country to which the request is directed. Forward two copies of the request and two copies of the translation to:

**Office of American Citizen Services
Room 4817
Department of State
Washington, DC 20520**

Include a certified check, or money order in the amount of \$500 payable to the American Embassy of the country, and the address of the court where the return of service should be sent. This fee includes a Consular fee of \$455 per letter rogatory, plus \$45 to cover the costs of fees that may be charged by local authorities (22 CFR 22.1 item 40). Any unexpended portion will be returned.

Chapter 3

Departure From Post

When issues of separation or divorce arise while a couple is at post, often one or both individuals believe it would be beneficial for the spouse to leave post before the end of the employee's tour of duty. Sometimes a spouse is told she or he has no choice and must leave post. Since the couple is still married and the spouse is on the employee's orders, there may be some flexibility in ensuring that both members of the couple have housing at post until appropriate solutions are reached.

When the spouse does leave post before the end of tour, there are certain factors that are important to consider, including a separation agreement, and advance travel regulations.



The Separation Agreement

If the couple is overseas at the time the divorce is contemplated, at least one party will probably be returning to fulfill residency requirements and filing procedures. In this case, it may be important for a simple statement to be drawn up and signed by both parties indicating that the separation is by **mutual consent** and that one party is not abandoning or deserting the other. A U.S. consul should witness any agreement done overseas. Again, check with an attorney in the state where the divorce will occur before signing such a document. **A spouse should not leave post until a statement of mutual consent has been signed and travel orders issued.**

A separation agreement is a legal, binding contract drawn up by the parties to the marriage and witnessed usually by a notary public. It can be general or specific, and address few or many of the divisions that occur in a separation. The couple should not write and sign an extensive separation agreement that divides property and specifies child custody without consulting an attorney.

Advance Return of Family Travel

The departure of a spouse (and children) from post before the employee may be arranged under special travel as follows (6 FAM 126.2):

6 FAM 126.2-1 Advance Return of Family Financed by Government

In certain cases, an employee's family may be authorized, before the employee's eligibility for travel, to return to employee's residence in the United States.

6 FAM 126.2-2 Conditions of Authorization

- a. The Department of State, Commerce, or the AID Mission Director or AID representative may authorize advance travel of an employee's family members when the Chief of Mission or the head of the agency establishment abroad determines that the public interest requires the return of a member of the family for compelling personal reasons of a humanitarian or compassionate nature including,

but not limited to, cases which may involve physical or mental health or death of any member of the immediate family.

- b. The Department or Agency in Washington may authorize advance travel of family members when there is an obligation imposed by an authority or circumstances over which the individual has no control. Advance travel may be authorized by the Department or Agency in Washington after family members have been at the post at least six months under the following conditions:
 - (1) A child who is not eligible for educational travel (see section 6 FAM 125.4) has been at a post abroad and educational needs (for the equivalent of grades 1 through 8 only) so require; or
 - (2) A child is over 21 years of age, unmarried, and has traveled to post before attaining such age (see section 6 FAM-126.4).

6 FAM 126.10 Return Travel of Spouses and/or Dependent Children to the U.S. in Connection with Marital Separation or Divorce (State only)

- a. Return travel of an employee's spouse may be authorized to the employee's service separation address in the United States (see definition in 6 FAM 111.3) or any other location in this jurisdiction on a cost-constructive basis from the employee's post of origin to the employee's separation address when a permanent marital separation or divorce is intended. Generally, a separation agreement should exist, but in the absence of an agreement, the chief of mission or head of agency's establishment abroad may determine that such travel is warranted and may initiate authorization action. The circumstances upon which this determination is based should be summarized in writing and retained at post until the employee departs post.
- b. Return travel of spouse may be included in the first travel authorization issued to the employee authorizing travel of the family after an agreement to separate or divorce is reached. In the circumstances referred to in paragraph **a** above, such travel may also be requested as advance travel in accordance with 6 FAM 126.2.

- c. Only one-way transportation to the employee's service separation address, or to any other location in the United States on a cost-constructive basis from the employee's post of origin to his or her separation address, will be authorized for return travel of spouse. If the employee subsequently requests travel of the spouse at U.S. Government expense to the same or another post to which the employee is assigned, the total cost of the return and subsequent travel may not exceed the cost which would have been incurred had the spouse traveled at the same time as the employee. In such cases, if the cost of the return and subsequent travel exceeds the employee's authorized travel, the employee will be liable for payment of the excess cost.
- d. Before any expenses are incurred for return travel of spouse, the spouse shall execute an agreement in accordance with the format in 6 FAM 126 Exhibit 126.10. This agreement states that the spouse understands that travel back to the same post will not be authorized at government expense, and that the agreement is signed voluntarily.
- e. Travel of dependent children of an employee may be authorized under this provision only if a legal custody agreement exists or the employee otherwise agrees in writing to permit the children to leave post permanently with the spouse. The employee must also submit a revised Form OF-126, Residence and Dependency Report, to declare as a loss those children for whom return travel is requested under this provision; see 3 FAM. The employee may also request advance travel of children in accordance with 6 FAM 126.2, if travel is not intended to be a permanent return to the United States.

How To Obtain Advance Travel From Post

The employee requests advance travel and advance shipment of household effects (HHE) on behalf of his or her family members. For approval, this request must be post supported and be accompanied by a justification. Post management also has the authority to authorize family member travel in place of the employee request. (6FAM 121.2) For State Department employees, the request for advance travel/shipment is

sent from post to the State Department (PER/CDA). For employees from other agencies, the request is sent to the appropriate bureau of the employee's agency. If approved, travel orders are issued in Washington, DC, by the employee's agency and cabled to post. If travel occurs before orders are issued, the employee must pay expenses and seek reimbursement.

Important Note: If the employee will not cooperate in requesting this advance travel/shipment, contact the Support Services Officer in the Family Liaison Office for guidance.

Advance return travel can be financed two ways; the employee's agency pays and the employee signs a repayment agreement against his or her eventual transfer; or the employee pays and is then reimbursed (on a cost-constructive basis) at the next transfer (6 FAM 126.2-4; 6 FAM 126.3; 6 FAM Exhibit 126.2-4). A divorce or an annulment prior to the issuance of travel orders does not cancel eligibility of family members for return to the United States.

Household Effects

The two methods of payment described above for advance return also apply to HHE movement.

Advance travel orders must be issued in order to authorize shipment. The weight of the advance shipment is then subtracted from the total weight allowed at the employee's next transfer. Air freight is authorized per person traveling (6 FAH 168.1).

Important Note: HHE can be removed from an overseas location or from storage (if stored at U.S. Government expense) **only** with the employee's consent or a valid court order.

When goods are being shipped from post, the spouse must present to the Transportation Division of the employee's agency a **notarized authorization** to receive a shipment such as the one shown on page 15.

In order for the spouse to gain access to goods in storage, it is suggested that the couple sign a Joint Property Statement such as the one which appears on page 15. This exact format is not needed. A notarized statement from the employee and signed by both parties authorizing the spouse to obtain access to the goods in storage is acceptable. Each spouse should keep copies, and a copy must be presented to the Transportation Division of the employee's agency when access is desired. The Transportation Division will then contact the storage company to authorize access for the spouse.

The Department is not liable for any costs incurred in gaining access, transporting, or segregating articles removed from storage before the regularly authorized time of removal. The employee (or spouse) must pay all costs which can then be claimed against the employee's future orders.

If the separation/divorce occurs when the employee is assigned to Washington, DC, access to goods in storage and travel to another point is not paid by the employee's agency. However, if the employee wishes to wait and move the HHE to the separated or divorced spouse with his or her next set of transfer orders, access and transportation costs would be paid by the agency on a cost-constructive basis.

In summary, the Transportation Division of the employee's agency requires the following for a spouse to arrange for a delivery of HHE (from either an overseas shipment or storage): travel orders; employee's consent (power of attorney or joint property authorization) or court order for property in the United States; and agency's authorization (based on orders).

Authorization To Receive Goods Shipped From Post

I declare that the property being shipped from [name of post] to [destination] under Travel Authorization [number] may be delivered to [name of spouse].

Date_____Signature_____

Joint Property Statement

We declare that the property being stored at U.S. Government expense is the joint property of _____ and _____ and either party may have access to these effects.

Date_____Signature_____Date_____Signature_____

Name of Storage Company _____

Address _____

Date entered storage _____ Invoice Number _____

Chapter 4

Lawyers

The need for good legal assistance is imperative in divorce cases. If the couple is overseas and contemplating separation, it is very important that each party consult an attorney in the state where the divorce action may be filed in order to learn about specific state laws that will affect the case. The spouse should at least have a telephone conversation with an attorney, **before leaving post**. The attorney can give specific guidance on separation agreements and the types of documents that should or should not be signed before departure. Most importantly, the lawyer can advise the party about actions that may protect him/her against charges of desertion, or assist in temporary child-custody issues.

Choosing a Lawyer

Several ways exist to locate a lawyer in the United States, even if the parties are overseas.



1. Personal references from trusted family members, friends, clergy, or business associates are often the best way of locating a competent attorney. Again, the attorney must be practicing in the jurisdiction where the divorce action will be filed.
2. A lawyer referral and information service operates in most cities. Call Directory Assistance for the telephone number of the service in the city or area that applies. [See also Chapter 9: Resources.]
3. The Martindale-Hubbell Law Directory lists members of U.S. and Canadian bar associations. It gives a biographical sketch of many lawyers and the legal specialties of the firm. You can review this directory in U.S. public libraries or in the Consular Section at many U.S. Embassies.
4. The American Academy of Matrimonial Lawyers publishes a list of certified fellows. The lawyers are listed by state for easy reference. [See Chapter 9: Resources.]

Retaining a Foreign Attorney

The Consular Section of the U.S. Embassy or Consulate maintains a list of foreign attorneys. You should contact several attorneys on the list and describe the nature of the services desired. Ask the attorney about his or her English-language fluency and for a written schedule of fees generally charged for the necessary services. Do not turn over documents or funds until you are certain that the attorney understands your problem and will handle the case. Address specific questions about the education and licensing of foreign attorneys to the foreign bar association or similar body.

Should your association with a foreign attorney prove unsatisfactory, a U.S. consular officer can contact the attorney on your behalf in an effort to ease and expedite your mutual communication. In addition, complaints against foreign counsel named on the list of attorneys can result in removal of their names from the list.

Legal Aid Associations

There may be facilities in the foreign country for low cost or free legal services. If information about such assistance is not included in the list of attorneys, ask the local bar association or the Ministry of Justice about the availability of legal aid. [See Chapter 9: Resources.]

Barristers and Solicitors

In some foreign cities, districts, or provinces, you may need the services of both a solicitor and a barrister. Barristers may appear in court, including superior courts and courts of appeal. Solicitors are allowed to advise clients, represent them in lower courts, and prepare cases for barristers to try in the higher courts.

Notaries Public, “Notaires,” and “Huissiers”

In some foreign countries, notaries public, “notaires” and “huissiers” can perform many of the functions performed by attorneys in the United States. For example, foreign notaries frequently draft instruments, wills, and conveyances. In some countries, a notary is a public official, appointed by the Ministry of Justice, whose functions include not only the preparation of documents, but the administration and settlement of estates. Such notaries may serve as repositories for wills and are empowered to serve legal documents. (In some countries “huissiers” serve documents.) Notaries, “notaires,” and “huissiers” are not lawyers but very specialized members of the legal profession. They may not plead cases in court.

How to Deal With a Foreign Attorney

The Office of American Citizen Services, Bureau of Consular Affairs, makes the following suggestions for dealing with a foreign attorney.

1. Find out the attorney's qualifications and experience.
2. Find out how the attorney plans to represent you. Ask specific questions and expect the attorney to explain legal activities in language that you can understand.
3. Find what fees are charged and how the attorney expects to be paid. "Notaires" and "huissiers" are usually government officials who must charge government-established fees. Some attorneys may expect to be paid in advance; some may demand payment after each action taken on your behalf, refusing to take further action until they are paid; and some may take the case on a percentage basis, collecting a prearranged percentage of the monies awarded to you by the foreign court.
4. Ask that your attorney keep you informed of the progress of the case according to a preestablished schedule. Remember that most foreign courts work rather slowly. You may request that the attorney send you monthly reports, even though no real developments have ensued, simply to satisfy your doubts about the progress of the case.
5. Have your attorney analyze your case, giving you the positive and negative aspects and probable outcome.
6. Do not expect your attorney to give a simple answer to a complex legal problem. Be sure that you understand the technical language in any legal document prepared by your attorney **before** you sign it.
7. Keep your attorney fully informed of any new developments in the case.
8. If you need to provide complex or technical documents to your attorney, consider having the documents translated into the native language. Remember, an elementary knowledge of English may not be enough to enable the attorney to understand the documents you provide.
9. Be honest with your attorney. Tell the attorney every relevant fact in order to get the best representation of your interests.
10. Find out how much time the attorney anticipates the case may take to complete. In some countries the courts recess for a period of several months. In addition, even if the case is resolved, currency control laws may delay the transferring of funds awarded to you from the foreign country for an indefinite period of time.

11. Request copies of all letters and documents prepared on your behalf.

The Lawyer-Client Relationship

Whether you hire an American or a foreign attorney, it is important to remember that you are in control and that the lawyer works for you. During your first conversation, gauge how you feel talking to the attorney about the details of your case, and listen to his or her responses to you. It is essential to be able to communicate easily and effectively with the lawyer, and to have confidence and trust that your interests will be well served.

Remember that you are paying for the expertise of the lawyer to properly advise you in the legal implications of the divorce action. Your lawyer should have a definite understanding of the courts in the jurisdiction and a thorough working knowledge of possible rulings in your particular case.

If you are not satisfied with your initial conversations, continue your search until you find an acceptable lawyer – one who meets your criteria. Careful attention to the selection of a lawyer should serve to eliminate serious client-lawyer controversy later.

The lawyer-client relationship is extremely important. The client must trust the attorney and feel comfortable following the advice given. To ensure a more effective relationship:

1. Be absolutely truthful with the attorney, even if the facts appear to be detrimental to your case;
2. Ask effective questions if choices are presented or advice is not understood;
3. Organize your questions and all materials to be presented to the attorney;
4. Distinguish between poor legal representation and correct, but distasteful, advice;
5. Recognize that you are paying for legal advice, not for therapy; and
6. Do not make major decisions without first consulting your attorney.

The initial interview with the attorney of your choice is extremely important, and you should be thoroughly prepared for it. The attorney will need information about your case; the nature and extent of your property, other assets, and debts acquired during the marriage; and the relationship of both spouses to any children. You will have specific questions to ask the attorney (see below). Doing your homework before this meeting will give the attorney a clearer picture of your particular circumstances.

The following list of questions to ask an attorney is offered as a guide. It focuses on priorities and is by no means comprehensive.

1. Are charges made by the hour or by the case? How much?
2. Will there be a retainer fee? How much and when will it be due? Can you expect a letter outlining the fee arrangements?
3. Will the lawyer be the sole attorney handling the case? If not, when can you meet the other members of the firm who will assist?
4. How long has the lawyer practiced law and specifically matrimonial law?
5. How many contested trials has the attorney been involved with?
6. If children are involved, what experience does the attorney have with contested custody proceedings?
7. How long will your case take to resolve?
8. What does the attorney require of you as a client?
9. Which U.S. state will have paramount interest in the marital status of the parties?
10. What are the residency requirements in order to file for divorce in a particular state?
11. If a foreign divorce is contemplated, will it be enforceable in the home state?
12. If a simple separation agreement is written to indicate that the separation is by mutual consent, will this document be legal in the home state?

You will need to provide the attorney with a clear picture of the income and property of the marriage. The following list, although not complete, describes the types of information that you must furnish your attorney. Be sure to hand-carry this information with you if you are coming from overseas.

General Information for Each Spouse

Name, date of birth
Home and work address, academic background
Employment history, military service

History of relationship/marriage

Date of marriage
Any previous separations or divorce proceedings

General Information for Each Child

Name, date of birth/adoption
Special needs/talents
Health
School/academic information

Relief Sought

A brief description of your thoughts on custody, support, and property distribution.

Assets/Liabilities

The following information, which may not be available at post, is useful, but not essential, for the initial contact with an attorney:

1. Information on gross salary of each spouse, rank, identification of income from other sources (a copy of a recent earnings statement will be very useful).
2. Copies of recent income tax returns and other business returns if applicable.
3. Information on all joint or individually held bank accounts, certificates of deposit, money market accounts, treasury bills or notes, etc., including types of accounts, balances, account numbers.
4. List of all debts, such as credit cards and outstanding loans. Include account numbers, balance due, and monthly payment schedule.
5. List of stocks and bonds: name and number of shares, cost, date purchased, where located, titleholder.
6. Copies of insurance policies, life, homeowner's or renter's, auto, health or major medical, and others including the policy number, parties insured, amount of the premiums, and the owner and beneficiary for each policy.
7. Inventory of household furnishings, appliances, and other acquired personal property with description of item, when acquired and by whom, cost at purchase, current value, where located.
8. List of real estate holdings including address and description of property, date of purchased, cost at purchase date, current appraisal, mortgage balance, titleholder.
9. Description of all vehicles and boats including when purchased and cost, current market value, titleholder, loan balance.
10. Location and contents of joint safe deposit boxes.

Average Monthly Living Expenses

1. Rent/mortgage, taxes, and insurance on the residence.
2. Utilities: heat, air-conditioning, water, electricity, gas, and telephone.
3. Food and sundry items.
4. Automobile: gas, oil, maintenance, license, and insurance.
5. Clothing (separate estimates for self and children)
6. Medical: doctors, dentists, drugs, and insurance.
7. Education: tuition, books, activities, camps, uniforms, and lunches.
8. Other miscellaneous expenses, as appropriate.

Chapter 5

Mediation

If both parties to the divorce are in the United States, they may wish to use the formal process of mediation. Family mediation is designed to help couples involved in separation and divorce reach a fair and realistic agreement. Mediation offers couples a non-adversarial means of settling the issues raised by their separation and can help reorder the couple's lives into separate ones. Couples are assisted by an impartial professional who is trained in conflict resolution and is knowledgeable about the legal, personal, and practical aspects of separation and divorce. It encourages communication between the parties in resolving property division, financial support, and child custody issues. Good mediation should enable a couple to achieve the following:

1. Less bitterness and hostility during and after divorce;
2. A more constructive way of resolving future conflicts; and
3. A settlement that creates the best possible ongoing parent-child relationship.

Mediation can be helpful at any stage of the dissolution of a relationship, to provide either a preliminary separation agreement or a final comprehensive settlement. After a divorce is finalized, mediation may be useful in negotiating remaining problems or new issues that arise.

The Mediation Process

Both parties should meet with their attorneys at the beginning of the mediation process in order to be informed about their legal rights. The process may go more smoothly if both attorneys are familiar with and supportive of the mediation process, but mediation can still be a good idea even if they are not.

Both spouses then attend an orientation session in which a detailed explanation of mediation is given. Under the guidance of the mediator,

the couple negotiates and resolves the specific issues (e.g., child custody, property division, financial support). The mediator helps the parties to assess the practicality of their proposals and to anticipate future situations. The mediator may offer alternative approaches to facilitate agreement. Mediators may meet both jointly and individually with the parties. Once an agreement has been reached, the mediator prepares a memorandum of the resolution of issues.



The Mediator's Role

The mediator's role is to do the following:

1. Ensure that both parties have access to the same financial information;
2. Prevent either party from dominating the other in negotiations;
3. Assure that decisions are made willingly; and
4. Promote an equitable agreement.

Mediation is a fairly new profession, and clients should inquire carefully about the mediator's qualifications:

1. Number of years of mediation experience;
2. Training in mediation and conflict resolution techniques;
3. Expertise in family dynamics, parenting issues, and the divorce process; and
4. Knowledge of family finances, property, and tax issues.

The Association for Family and Conciliation Courts in Madison, Wisconsin (608-251-4001 www.afccnet.org) has directories of private and public mediation practitioners. Contact them directly for their directories.

Chapter 6

Children and Divorce

Custody Considerations

The Foreign Service employee's frequent moves and overseas assignments must be taken into consideration in any discussion of child custody. Traditional interpretation of sole or joint custody with frequent or equal visitation rights becomes meaningless if the divorced parents are half a world apart.

Important Note: Children of divorced employees or spouses cannot be listed on travel orders unless a copy of the divorce decree establishing that the employee/spouse has joint or sole custody of the children is on file in the appropriate personnel office. When there is joint custody, or when custody resides with the non-employee spouse, a notarized statement from the former spouse authorizing the child to reside abroad also is required.

Sometimes the non-employee spouse will argue that custody should not be granted to the employee spouse because of the difficulties of raising children overseas and the inherent risks of mobility to the educational and emotional stability of the child. However, parents should bear in mind that the quality of parental care and the best interests of the child should always be the most important variable in deciding custody.

Important Note: A student cannot receive an education allowance to attend school in the United States if the non-employee parent resides in the United States, unless the employee parent stationed overseas has sole custody. (DSSR 276.3)

The Emotional Effects of Divorce on Children

Marriage difficulties are very hard on children. They may not readily show their distress or even realize the implications that a separation

or divorce may have for them. Parents need to explain to children in an honest and simple way what is happening and why. Over time, children will bring up new questions concerning the breakup that will also need to be addressed.

Children need to feel that they are unconditionally loved by both parents, and that this love will continue throughout their lives, even if the parents are divorced or no longer living together. No matter how much distress there may be between spouses, the children love both parents and should be allowed to continue to be with both of them without guilt. When working out a visitation schedule, keep in mind that children desperately want to have a meaningful relationship with both parents. Thus, each party should try to maintain objectivity, allow frequent and flexible visitation rights, and not erect barriers between parent and child. Severe restrictions may generate hostility, anger, and guilt within a child. Understanding behavior by both parents during a divorce can teach children to be self-assured even under life's most trying and adverse circumstances.

Travel of Children of Separated Families

The Foreign Affairs Manual (3 FAM 3750) outlines the yearly travel benefit for children of a Foreign Service employee stationed overseas. This regulation provides for payment of one round trip per year for a child under the age of 21 to visit either of the child's parents. This travel is funded between the nearest point of entry in the United States (contiguous 48 states) from post, and return. The benefit can be used for the employee's natural, adoptive, or stepchildren. Travel can be approved from post to another overseas point, but it is computed on a cost-constructive basis using the travel cost from the post of assignment to the nearest U.S. (contiguous 48 states) point of entry. Travel authorization and GTR's (which are being phased out) should be obtained at post. The employee must sign a statement that this travel is not inconsistent with any applicable court order and/or separation agreement.

Cost construction involves a comparison of two amounts: (1) the cost to the USG for travel or sending goods as prescribed in the Travel Authorization; and (2) the cost for the employee to travel or send goods

in a way which deviates from the Travel Authorization and which is dictated by personal preference. Only in cases where the second cost is more than the first does the employee pay the difference personally.

The child may travel to visit the Foreign Service parent abroad if the child does not regularly reside with that parent, and if the Foreign Service parent is not receiving an educational allowance, educational travel allowance, or separate maintenance allowance for the child. The child may travel to visit the non-Foreign Service parent if that parent resides in a country other than the country to which the Foreign Service parent is assigned, and the child regularly resides with the Foreign Service parent and does not regularly attend school in the country in which the other parent resides (3 FAM 3752).

When both parents are foreign affairs agency employees, the non-custodial parent should apply for the travel of children of separated families' benefit (3 FAM 3753.2).

Child Support and Alimony Enforcement

The salary or pension of a Federal employee may be garnished for the purpose of enforcing a legal obligation to provide child support or alimony (see 42 USC 659; 5 CFR 5 80. 1 01 et seq.). The party requesting garnishment must provide evidence of the legal obligation such as a court order or custody/divorce decree. The Federal garnishment statute applies also to military personnel. The Office of the General Counsel, Department of Defense, Washington, DC 20301, may be able to offer further assistance regarding garnishment of salary or pension of military personnel. For information on how to have a Foreign Service employee's wages or annuity garnished, see Chapter 8: Financial and Privacy Act Considerations.

The Department expects its employees to fulfill their financial obligations. The reference 3FAM 4139.9, which governs financial responsibility, states, in part, that an agency may take disciplinary action for irresponsible behavior. "Disciplinary action may be warranted where an employee's failure to financial obligations will result in embarrassment and/or discredit to the agency or Government."

Any individual owing over \$5,000 in child support is prohibited by public law from receiving a U.S. passport. This prohibition, as stated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), includes diplomatic and official passports. It includes both new issuances and renewals. The Department has no authority to waive this statutory requirement. For more information, contact:

Office of Passport Policy, Planning and Advisory Services
Suite 917, SA-1
Department of State
Washington, D.C. 20522-0917
Telephone: 202-663-2662
Fax: 202-663-2654

On August 22, 1996, the President signed into law "The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996" (Public Law 104-193), which includes provisions regarding international child support enforcement. Section 371, Section 659A and Section 654 (32) of the Act provide for a declaration by the Secretary of State, with the concurrence of the Secretary of Health and



Human Services, that a foreign country has procedures in place for child support enforcement owed to persons who are residents of the United States. The Department of State has undertaken bilateral discussions with many countries and formal arrangements are now in place for specific foreign countries on the subject. For information about international child support enforcement developments, see the Bureau of Consular Affairs' home page at (<http://travel.state.gov/childsupport.html>).

Parental Child Abduction

The International Parental Kidnapping Crime Act of 1993 (IPKCA) made child abduction from the United States a federal crime. Also the Hague convention on the Civil Aspects of International Child Abduction, to which the United States became party in 1988, is currently in force between the U.S. and certain other countries. The Hague Convention provides a legal mechanism for the return of internationally abducted children to their country of habitual residence. A court order of custody is not necessary to violate IPKCA or for an abduction to occur under the Hague Convention. Most criminal abductions under IPKCA and most abductions under the Hague Convention happen before any court order of custody is issued. However, a well-written custody decree is an important line of defense against parental child abduction. The National Center for Missing and Exploited Children (NCMEC) has developed recommendations for writing custody decrees to help prevent the abduction of a child. Their addresses may be found in Chapter 9: Resources.

The parent with custody should obtain several certified copies of the custody decree. These copies can be used in the following ways to prevent an abduction:

1. Give a certified copy to the child's school. This will give the school a basis for refusing to release a child to a non-custodial parent and for notifying both the custodial parent and the police if a problem should arise.
2. To prevent the issuance of a U.S. passport for the child, a copy of the custody decree and a written request that the child not be issued a passport must be sent to:

Office of Children's Issues (CA/OCS/CI)
Department of State
Washington, DC 20520
FAX: 202-663-2674
www.travel.state.gov

Either parent can request the Office of Children's Issues to notify them if the other parent applies for a passport for the child.

Important Note: A passport already issued to your child will not be revoked if it was issued appropriately, but a court of competent jurisdiction can order that it be turned over to the Department or another person.

1. Effective fall 2000, the application for issuance of a U.S. passport to a child under the age of 14 will require, with certain very limited and narrow exceptions, the signature of both parents.
2. The request for passport notification or denial should include the child's full name, date and place of birth and the requesting parent's address and phone numbers and be signed by the requesting parent. If a court order is sent, it should be the entire order.
3. To prevent the issuance of a foreign passport or a foreign visa for the child, a certified copy of the custody decree and a written request that a passport/visa not be issued to the child must be sent to the foreign embassy. In your letter, inform them that you are sending a copy of this request to the Department of State. No international law requires compliance with such request, but many countries will comply voluntarily.

The Bureau of Consular Affairs has published a booklet, *International Parental Child Abduction*, that contains useful information and a checklist for parents. For a copy, write:

Office of Children's Issues (CA/CI)
Department of State
Washington, DC 20520
www.travel.state.gov



Chapter 7

Retirement and Health Benefits

The Foreign Service Act of 1980, as amended, provides pension benefits to certain Foreign Service spouses. The Act states that a Foreign Service spouse divorced on or after February 15, 1981, is entitled to pension rights if he or she was married for at least 10 years during federal service to a participant in the Foreign Service Retirement and Disability System (FSRDS) or Foreign Service Pension System (FSPS). The employee must have been in the Foreign Service for at least five years; the other five years can have been in the Civil Service. These former spouses, if they do not remarry prior to the age of 55, are entitled to a pro rata share of up to 50 percent of the member's annuity unless a court order or spousal agreement provide for a different share or for no share. For example, in the absence of a court order or spousal agreement to the contrary, a member who retires after February 15, 1981, with 30 years of service and who was married to the former spouse for the entire 30 years would have his or her annuity reduced by 50 percent with that amount being payable to the former spouse. If the same member had been married to the former spouse for 15 of those 30 years, his or her annuity would be reduced by 25 percent with that amount payable to the former spouse. See the Foreign Service Act, 1980, P.L.960465, Section 814.

Survivor Benefits

The Foreign Service Act of 1980, as amended, also provides for a survivor benefit for former spouses (not remarried prior to age 55) equal to a pro rata share of the regular survivor annuity unless otherwise directed by a court order or spousal agreement. A member's maximum regular survivor annuity equals either 55 percent (under the Foreign Service Retirement System) or 50 percent (under the Foreign Service Pension System) of the member's regular full annuity.

A former spouse who does not meet the eligibility requirements for pension or survivor benefits under Section 814 of the Act, may still be entitled to receive a portion of the member's annuity, if this is provided for in a valid court order (Section 820(b)(2)). In addition, P.L. 100-238 of January 8, 1988, extended eligibility for survivor benefits to former spouses married to Foreign Service members between 9 months and 10 years, provided that the survivor benefit is either elected by the member or ordered by the court.

A former spouse divorced before 1981 may have entitlement to a pro rata share of pension and survivor benefits in accordance with the provision of P.L. 100-204, December 22, 1987, and P.L. 100-238, January 8, 1988. While application for these benefits expired June 22, 1990, PER/RCT/RET will review any requests for waiver of this deadline on a case-by-case basis.

For more detailed information on these pension and survivor benefits, contact:

Office of Retirement, PER/RET
H620 SA-1
Department of State
Washington, DC 20520
Telephone: 202-261-8960

Health Benefits

P.L. 98-615, the Civil Service Spouse Equity Act of 1984 and its amendments, allows certain former spouses to enroll in the Federal Employees Health Benefits Program (FEHBP). A former spouse of a participant or annuitant under either of the Foreign Service Retirement Systems may enroll in a health plan if the following requirements are met:

1. The former spouse does not remarry before age 55;
2. The former spouse was enrolled in a health plan as a family member any time during the 18 months preceding the date of divorce or annulment; and

3. The divorce was effective on or after May 7, 1985, and the former spouse receives or has future entitlement to receive an annuity or survivor annuity payable under either of the Foreign Service Retirement Systems.

Within 60 days after the dissolution of the marriage, the former spouse must enroll in an approved health benefits plan as an individual or self and family. The former spouse must pay the full subscription charge of the enrollment (both the government and self-share). The spouse is free to choose any of the companies under the FEHBP, and the Office of Retirement will provide information on the costs of the different policies.

The spouse is entitled to remain as a family member on the employee's coverage until the divorce is final. Regardless of custody, the child(ren) can remain as a family member on the employee's coverage. However, in this case, the insurance companies will reimburse payment for medical bills to the employee, even if the spouse has incurred the expense. It is sometimes possible for the spouse to make arrangements with the insurance carrier to have the company reimburse the parent who makes the payment. This issue should be addressed in advance by both parties in the divorce.

Federal Employees Health Benefits 18/36 TCC

Former spouses who do not have an entitlement to a pro rata share or court-ordered share of the employee's retirement annuity have an alternate way of retaining government health benefits. On January 1, 1990, a new law (P.L.100-654) went into effect that will temporarily continue coverage under the FEHBP for certain former spouses.

A former spouse may be eligible to continue FEHBP coverage if he or she was enrolled in a regular FEHBP plan as a family member at the time of the divorce or annulment (on or after January 1, 1990). The former spouse may choose self-only enrollment or a family enrollment that will cover the former spouse and children of that spouse and the Federal employee. Coverage will continue for a maximum of 36 months, or until covered by other health insurance, whichever comes

first. The cost of FEHBP enrollment will be the full premium (the self and government shares) plus a two percent administrative charge.

Either the employee or the former spouse should notify the employee's agency within 60 days after the divorce or annulment is finalized to apply for these health benefits.

Further information on the FEHB 18/36 TCC Program for former spouses is available from the post personnel office or the State Department Retirement Office:

PER/RET, H620 SA-1
Department of State
Washington, DC 20520
Telephone: 202-261-8960

For USAID, the employee or former spouse must contact the Human Resources Office, in writing

M/HR/POD
USAID RRB/ITC
Washington, DC 2523-2700
Telephone: 202-712-4174

Chapter 8

Financial and Privacy Act Considerations

Garnishment of Wages/Annuity

If the employee fails to make U.S. court-ordered alimony or child support payments, the former spouse may be able to have the employee's wages or annuity garnished. The former spouse must contact his or her lawyer or the court to have a writ of garnishment issued. If the writ does not state that it is for child support or alimony, an original or certified copy of the divorce decree must be attached to the writ. Garnishment may be for back or ongoing support. The original or a certified copy of the writ is sent to the appropriate office.

For State: **Office of the Executive Director**
 Office of the Legal Adviser (L/EX)
 Room 5519
 Department of State
 Washington, DC 20520

For USAID: **AID/GC/L**
 USAID RRB/ITC Room 606B
 Washington, DC 20523-2700

Access to Employee Information

During the separation and divorce process, both employee and spouse should be aware that certain information about former and present Federal employees is available to the public. According to Office of Personnel Management regulations (5 CFR 293.31 1), the following information from both the Official Personnel Folder and employee performance file system folders, their automated equivalent records, and from other personnel record files that constitute an agency record are considered available to the public:

1. Name;
2. Present and past position titles and occupational series;

3. Present and past grades;
4. Present and past annual salary rates (including performance awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);
5. Present and past duty stations (includes room numbers, office designations, or other identifying information regarding buildings or places of employment); and
6. Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals), the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may be withheld when they are so intertwined with performance appraisals that their disclosure would reveal an individual's performance appraisal.

The portion of the employee's OER pertaining to spouses (pre-1971) or any of the information listed above can be requested by writing to one of the following addresses:

For State: **Office of Information Resource Management
Programs and Services (A/RPS/IPS)
SA-2, Room 6001
Washington, DC 20522-6001**

For USAID: **M/AS/IRD
USAID RRB/ITC Room 2.7C
Washington, DC 20523-2701
202-712-5027**

In addition, a written request for an estimate of pro rata pension share can be requested from the Office of Retirement. (When the spouse makes a written request for this information, it will then be sent to the employee as well.) A written request for the name and number of the health benefits policy for family members can also be requested from the Office of Retirement. Telephone: 202-261-8960.

Other personal information regarding employees, spouses, or dependents is protected by the Privacy Act and can only be released

with the consent of the individual concerned or for other specified “routine uses,” as published in the Federal Register (http://www.access.gpo.gov/su_docs) pursuant to the Privacy Act, or pursuant to a court order.

Credit Union Membership

A divorced spouse can have an account at either the State Department Federal Credit Union (SDFCU) or the Lafayette Federal Credit Union (AID) if she or he:

1. Has an account in his or her own name prior to the divorce; or
2. Has a blood relative (such as a child) with an account.

For more information, contact:

State Department Federal Credit Union

1630 King Street

Alexandria, VA 22314-2745

Telephone: 703-706-5000 (Washington metropolitan area)

800-296-8882(continental United States) or

Lafayette Federal Credit Union

3535 University Boulevard

West Kensington, MD 20895

Telephone: 301-929-7990, 1-800-888-6560

Chapter 9

Resources

General Resources

Lawyer referral services in Washington metropolitan area:

Alexandria County	703-548-1105
Arlington County	703-228-3390
District of Columbia	202-879-1261
Fairfax County	703-246-3780
Montgomery County	301-279-9100

The American Academy of Matrimonial Lawyers
150 North Michigan Avenue, Suite 2040
Chicago, IL 60601
Telephone: 312-263-6477
www.aaml.org

National Center for Missing and Exploited Children
699 Prince Street
Alexandria, VA 22314
Telephone: 703-235-3900
703-274-3900
1-888-246-2632
www.missingkids.com

Sources of Help

1. Associates of the American Foreign Service Worldwide (AAFSW) sponsors a support group, *Women in Transition*, for separated and divorced Foreign Service spouses in the Washington area. You need not be a member of AAFSW to attend. The Family Liaison Office has information and contact names. Telephone: 202-647-1076/800-440-0397

2. The Employee Consultation Service, an office of the Department of State, provides short-term counseling and referrals for State Department and AID employees and family members. This is a confidential, free service staffed by licensed clinical social workers. They are located in Room H246, Columbia Plaza. Telephone: 202-663-1815.
3. The Fairfax County Office for Women focuses on eight areas – employment, violence, families in transition, money management, health, education, dependent care, and community outreach. Their address is:

12000 Government Center Parkway
Suite 318
Fairfax, VA 22035
Telephone: 703-324-5720
4. Montgomery County Commission for Women: Counseling and Career Center is the Montgomery County organization that provides personal, financial, and career counseling, and general legal information and referrals as needed for divorcing women. They work with both Maryland and Washington, DC residents. Their address is:

255 North Washington Street
4th Floor, Bank America Building
Rockville, MD 20850
Telephone: 301-279-1800
Web site: www.co.mo.md.us/cfw
5. The Women's Center runs workshops on the financial and legal aspects of separation and divorce in Virginia and has a volunteer lawyer who will answer questions by telephone. Their address is:

133 Park Street, NE
Vienna VA 22180
Telephone: 703-281-2657
Web site: www.thewomenscenter.org

Chapter 10

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